SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 720

JAMES O. HARTMAN,

Petitioner,

vs.

WILLIE ROSS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

CHARLES H. HOUSTON,
Counsel for Respondent.

JOSEPH C. WADDY,
MARGARET A. HAYWOOD,
Of Counsel.

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Opinion Below.

The United States District Court for the District of Columbia rendered no opinion (R. 5). The opinion of the United States Court of Appeals for the District of Columbia, reported in — F. 2d —, is found in the record at pages 7-10.

Jurisdiction.

The jurisdiction of this Court is invoked by petitioner under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. Section 347 (a).

Question Presented.

Was the violation of Section 58 of Traffic and Motor Vehicle Regulations for the District of Columbia by petitioner the proximate cause of respondent's injuries?

Regulation Involved.

"Locks on Motor Vehicles. Every motor vehicle shall be equipped with a lock suitable to lock the starting lever, throttle, or switch, or gear shift lever, by which the vehicle is set in motion, and no person shall allow any motor vehicle operated by him to stand or remain unattended on any street or in any public place without first having locked the lever, throttle, or switch by which said motor vehicle may be set in motion." D. C. Traffic Regulations, 58.

Statement of the Matter Involved.

The stipulation of facts on which the case was disposed of appears in the record at pages 3-4.

Summary of Argument.

1. The decision of the United States Court of Appeals for the District of Columbia logically follows the development of the law governing motor vehicles in the District of Columbia as expressed in the decisions and legislation of Congress.

2. The decision of the Court of Appeals was on a question of local municipal law which has no effect beyond the borders of the District of Columbia. The decision is in line with the modern trends and developments of the law.

Argument.

I.

The decision of the United States Court of Appeals for the District of Columbia logically follows the development

of the law governing motor vehicles in the District of Columbia as expressed in the decisions and legislation of Congress.

Petitioner complains that the Court of Appeals overruled the case of *Squires* v. *Brooks*, 44 App. D. C. 320 (1916). Since the decision of *Squires* v. *Brooks* there has been a steady extension of the liability of the owner of a motor vehicle for negligent acts of a third person. For example, in 1932 a husband was held not liable for the wife's negligent operation of an automobile in the absence of proof of her agency for him.

Rubenstein v. *Williams*, 61 F. 2d 575, 61 App. D. C. 266 (1932).

In 1934, a father was held liable for permitting his son to drive his automobile to school notwithstanding he had an express agreement with his son that he should not be responsible for the son's actions.

Hardy v. *Smith*, 68 F. 2d 992, 63 App. D. C. 44 (1934).

On May 3, 1935, Congress passed a comprehensive Owner's Financial Responsibility Act governing the use of automobiles in the District of Columbia (49 Stat. 166 Ch. 89; D. C. Code 1940, Title 40, Ch. 4). It was provided in Section 3, among other things, "* * * Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall, in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner. * * *" This development in the law logically required the Court to hold that

when in violation of the regulation quoted above petitioner left his motor truck at night unlocked in a public alley, he assumed the risk that a third person would start the vehicle and cause the harm complained of.

The present is a case in which the very injury occurred that the regulation sought to avoid as pointed out by the Court of Appeals. There is no similar regulation in the District of Columbia affecting any other property (R. 9).

II.

The decision of the Court of Appeals was on a question of local municipal law which has no effect beyond the borders of the District of Columbia. The decision is in line with the modern trends and developments of the law.

The Record shows (R. 4) that this case is based upon the traffic regulations of the District of Columbia, Section 58. These are local municipal regulations which have no force or effect beyond the District of Columbia and are, therefore, without the general significance required to ground the exercise of jurisdiction by this Court. Petitioner attempts to extend the decision of the Court to absurd limits by extreme hypothetical cases but the Court of Appeals was dealing with the case before it.

Certainly on the question of causation, the decision of the Court of Appeals accords with common sense and justice and the trend of Federal decisions. For example, *Massey-Harris Company* v. *Gill*, 64 F. 2d 792 (1933). Here the independent illegal act was of a nature which the regulation required the defendant to anticipate. The regulation required him to foresee that if his motor vehicle should be left unlocked on a public highway, a third person might start the vehicle and injure other persons or property lawfully using the highway. Under such circumstances, respondent's act is not isolated in the chain of causation but

continues to operate in the eyes of the law. See Anno. 78 A. L. R. 471 at page 480.

Conclusion.

The judgment below was clearly right; the opinion of the Court of Appeals, in a most detailed, logical and learned manner, refutes the petitioner's various contentions and therefore, this respondent has not attempted, at this time, to present an adequate argument on the merits. It is respectfully submitted that no useful purpose could be served by granting certiorari to review the opinion of the Court of Appeals for the District of Columbia in this case and the petition should be denied.

Respectfully submitted,

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JOSEPH C. WADDY,
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